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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Plaintiff and Respondent,

v.

NICOLE ELYSE PAGONIS, et al.,

Defendants and Appellants.

NICOLE S. TATRO,

Real Party in Interest, Intervenor
and Respondent.

H044933

(Santa Clara County

Super. Ct. No. 16CV299947)

In this employment discrimination case, Nicole Elyse Pagonis appeals the trial court's denial of her motion to compel arbitration and stay litigation.

Respondent Nicole S. Tatro worked as a dental hygienist in Pagonis's dental office; she was terminated in 2015 after taking disability leave for her pregnancy and failing to return to work on the date Pagonis specified. The Department of Fair Employment and Housing (DFEH) filed a complaint against Pagonis alleging causes of action for employment discrimination, and the trial court granted Tatro's application to file a complaint in intervention. Pagonis filed a motion to compel Tatro to arbitrate her claim, and to stay the litigation pursuant to Code of Civil Procedure section 1281.2.¹ The

¹ All further undesignated statutory references are to the Code of Civil Procedure.

trial court denied the motion, finding applicable the third-party litigation exception under section 1281.2, subdivision (c) that authorizes the court to deny or stay arbitration where a party to the arbitration agreement is involved in a pending court action with a third party arising out of the same transactions.

Pagonis first asserts that the trial court erred as a matter of law because it did not determine under section 1281.2 whether a valid agreement to arbitrate the claims between Pagonis and Tatro existed before denying her motion to compel arbitration. She next contends that the trial court should have followed the guidance of federal procedure and compelled arbitration, and that the trial court's denial of the motion to compel arbitration contravened the public policy favoring enforcement of arbitration agreements. Finally, she argues that the trial court abused its discretion when it failed to grant a stay and instead denied enforcement of the arbitration agreement. Finding neither legal error nor abuse of discretion, we affirm the trial court's order.

I. STATEMENT OF THE FACTS AND CASE

Pagonis is a dentist whose practice is located in Los Gatos. Tatro commenced work for Pagonis as a dental hygienist on January 6, 2014. According to Pagonis, prior to starting work, Tatro signed an arbitration agreement on November 26, 2013.²

The arbitration agreement contained the following language: "If the Company and the employee (Parties) are unable to resolve an employment dispute, they shall submit any such dispute (whether bases [*sic*] on contract, tort, or statutory duty or prohibition, including any prohibition against discrimination or harassment) to binding arbitration in accordance with the Federal Arbitration Act and _____ (insert state name) statutes. Either party may enforce the award of the arbitrator. The parties understand that they are waiving their rights to a jury trial."

Tatro became pregnant in September 2014 and went on disability leave on February 26, 2015 due to pregnancy complications. After the birth of her son by

² Tatro does not concede that she signed the arbitration agreement.

Caesarian Section in May 2015, Tatro was placed on disability until July 14, 2015. On June 15, 2015, Pagonis sent Tatro an e-mail advising her that Pagonis expected Tatro to return to work on July 6, 2015, because Tatro was entitled to only four months of pregnancy disability leave. Tatro responded, stating that she was still on disability leave, and expected to be released on July 14, 2015, at which point she intended to return to work. Pagonis told Tatro that if she did not return to work on July 6, 2015, Pagonis would consider Tatro to have resigned. When Tatro did not return to work on July 6, 2015, Pagonis informed her by letter that she deemed Tatro to have abandoned her job and to have resigned voluntarily.

On September 15, 2015, Tatro filed a verified complaint with the DFEH alleging violations of the Fair Employment and Housing Act (FEHA). The DFEH conducted an investigation and filed a complaint against Pagonis in Santa Clara County Superior Court on September 15, 2016 on behalf of itself and Tatro asserting violations of FEHA, alleging causes of action for: (1) sex discrimination (Gov. Code, § 12940, subd. (a)); (2) disability discrimination (Gov. Code, § 12940, subd. (a)); (3) failure to reasonably accommodate disability (Gov. Code, § 12940, subd. (m)); (4) failure to engage in the interactive process (Gov. Code, § 12940, subd. (n)); (5) failure to reinstate a female employee disabled by pregnancy (Gov. Code, § 12945, subd. (a)(1)); (6) interference with pregnancy disability leave rights in violation of FEHA (Gov. Code, § 12945, subd. (a)(4)); (7) retaliation in connection with employment (Gov. Code, § 12940, subd. (h)); (8) failure to prevent discrimination in violation of FEHA for Tatro (Gov. Code, § 12940, subd. (k)); (9) failure to prevent discrimination in violation of FEHA for DFEH (Gov. Code, § 12940, subd. (k)); and (10) declaratory relief (§ 1060).

On December 21, 2016, the trial court granted Tatro's request to intervene in the action pursuant to section 38, subdivision (b) and Government Code section 12965, subdivision (a). Tatro filed a complaint in intervention, asserting causes of action for (1) sex discrimination (Gov. Code, § 12940, subd. (a)); (2) disability discrimination

(Gov. Code, § 12940, subd. (a)); (3) failure to reasonably accommodate disability (Gov. Code, § 12940, subd. (m)); (4) failure to engage in the interactive process (Gov. Code, § 12940, subd. (n)); (5) failure to take all reasonable steps to prevent illegal discrimination (Gov. Code, § 12940, subd. (k)); and (6) wrongful termination in violation of public policy. The DFEH filed its First Amended Complaint on February 10, 2017. Tatro's complaint in intervention asserted five of the same causes of action as DFEH's First Amended Complaint.

On March 13, 2017, Pagonis filed a motion to compel Tatro to submit her claims to binding arbitration and to stay DFEH's complaint and Tatro's complaint in intervention pending the arbitration hearing under section 1281.2. DFEH and Tatro opposed the motion. The trial court found that DFEH was not a party to the arbitration agreement, and therefore was a third party within the meaning of section 1281.2, subdivision (c). The court further found that DFEH's claims arose from the same transaction as that underlying Tatro's suit, with the result that there existed a distinct possibility that conflicting rulings on common issues of law or fact relating to these claims could result if the arbitration went forward. The court thus applied the third-party litigation exception described in section 1281.2, subdivision (c), finding it had discretion to stay or deny arbitration under that section's authority. The trial court then denied Pagonis's motion to compel arbitration and stay the proceedings. Pagonis timely appealed. (§ 1294, subd. (a).)

II. DISCUSSION

A. FAA or CAA

We first consider whether the Federal Arbitration Act (FAA) (9 U.S.C.A. § 2) or the California Arbitration Act (CAA) (§ 1280 et seq.) applies to the arbitration agreement before us. The question of procedural governance is of significance here because the FAA requires courts to enforce arbitration agreements despite pending litigation involving a third party that might result in inconsistent or conflicting findings of fact or

legal rulings, and contains no exception similar to section 1281.2, subdivision (c) that would permit the stay or denial of arbitration. (*Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 217.) Thus, if the FAA procedures govern the enforcement of the arbitration agreement before us, the CAA would be preempted, section 1281.2, subdivision (c) would be inapplicable, and the trial court erred as a matter of law when it denied the motion to compel arbitration brought by Pagonis.

In her briefing, Pagonis herself states that the FAA does not apply to the arbitration agreement before us. Counsel for Pagonis confirmed this position at oral argument, asserting that the employment agreement does not involve interstate commerce, and that FAA procedures do not govern the adjudication of the arbitration agreement. Counsel for Pagonis also confirmed at oral argument that Pagonis did not put forth any evidence in the trial court that the employment agreement involved interstate commerce. Consistent with this position, Pagonis invoked CAA procedures in the trial court, noticing her motion to compel arbitration under the CAA, and indicating that “[t]his motion is made pursuant to a written agreement to arbitrate signed by Plaintiff NICOLE S. TATRO, California Code of Civil Procedure Sections 1280 et seq., and 1295, and other relevant California law.” The trial court and all three parties operated under the assumption that CAA procedures apply to the enforcement of the arbitration agreement.

Under these circumstances, Pagonis forfeits any argument that the FAA applies here. (*Cable Connection, Inc., v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1351, fn. 12.) As a result, we conclude that the CAA, including the third-party litigation exception under section 1281.2, subdivision (c), is the procedure properly governing the enforcement of the arbitration agreement between Pagonis and Tatro.

B. The Third-Party Exception (section 1281.2, subd. (c))

Recognizing the strong public policy in California favoring arbitration, section 1281.2, which is central to the CAA’s procedural scheme, requires the trial court to enforce a written arbitration agreement unless a statutory exception applies. (*Acquire II*,

Ltd. v. Colton Real Estate Group (2013) 213 Cal.App.4th 959, 967 (*Acquire II*).) Those statutory exceptions are limited to circumstances “where (1) a party waives the right to arbitration; (2) grounds exist for revoking the arbitration agreement; and (3) pending litigation with a third party creates the possibility of conflicting rulings on common factual or legal issues.” (*Ibid.*) The third-party litigation exception in section 1281.2, subdivision (c) “addresses the peculiar situation that arises when a controversy also affects claims by or against other parties not bound by the arbitration agreement,” giving “the court discretion not to enforce the arbitration agreement under such circumstances—in order to avoid potential inconsistency in outcome as well as duplication of effort . . .” (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 393 (*Cronus*).) The Legislature included section 1281.2, subdivision (c) as part of the statutory scheme governing arbitration “so that common issues of fact and law will be resolved consistently, and only once.” (*Mount Diablo Medical Center v. Health Net of California, Inc.* (2002) 101 Cal.App.4th 711, 727.)

The third-party exception outlined in section 1281.2, subdivision (c), applies only when (1) “[a] party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party,” (2) the action or proceeding “aris[es] out of the same transaction or series of related transactions,” and (3) “there is a possibility of conflicting rulings on a common issue of law or fact.” (§ 1281.2, subd. (c).) If all three of these conditions are satisfied, section 1281.2, subdivision (c) grants the trial court discretion to refuse to enforce the arbitration agreement or to stay arbitration while the third party’s court action is pending. “A trial court has no discretion to deny or stay arbitration unless all three of section 1281.2(c)’s conditions are satisfied.” (*Acquire II*, *supra*, 213 Cal.App.4th at pp. 967-968, citations omitted.)

Although DFEH and Tatro argue at length that the three conditions necessary to apply the third-party litigation exception are met, Pagonis does not challenge the trial court’s ruling that the first two conditions of 1281.2, subdivision (c) were satisfied, i.e.,

that DFEH is a third party in litigation with Pagonis or that the complaint DFEH filed and the complaint Tatro filed as an intervenor arise out of the same transaction or series of transactions. Pagonis does, however, dispute the trial court's finding that there is a possibility of conflicting rulings on a common issue of law or fact, arguing that allowing the arbitration to move forward while staying the DFEH litigation would not produce inconsistent rulings on the issues common to the litigation and arbitration. (§ 1281.2, subd. (c).) "Whether there are conflicting issues arising out of related transactions is a factual determination subject to review under the substantial evidence standard." (*Acquire II, supra*, 213 Cal.App.4th at p. 972.)

We are not persuaded by Pagonis's argument. The trial court was not required to find that inconsistent rulings of law or fact were inevitable. Rather, the court was called upon to determine if conflicting rulings were possible if arbitration went forward. (*Lindemann v. Hume* (2010) 204 Cal.App.4th 556, 567.) The court was entitled to rely on the pleadings of the parties, as the "allegations of the parties' pleadings may constitute substantial evidence sufficient to support a trial court's finding that section 1281.2(c) applies. A party relying on section 1281.2(c) does not bear an evidentiary burden to establish a likelihood of success or make any other showing regarding the viability of the claims and issues that create the possibility of conflicting rulings. An evidentiary burden is unworkable because . . . a motion to compel arbitration is typically brought before the parties have conducted discovery." (*Acquire II, supra*, 213 Cal.App.4th at p. 972, citations omitted.)

We agree with DFEH that if arbitration went forward, a real possibility existed that conflicting rulings of law or fact could result. DFEH notes several potential conflicts, including possible inconsistent rulings regarding whether Pagonis discriminated against Tatro based on sex by refusing to allow her to take a leave of absence as a reasonable accommodation during her pregnancy, and conflicting rulings on the issue of whether Tatro was disabled, and whether Pagonis discriminated against her because of

that disability. Substantial evidence supported the trial court's finding that inconsistent rulings were possible under these circumstances. Given the fact that Tatro and DFEH asserted virtually identical claims, the policy favoring consistent resolution of the facts and law established in section 1281.2, subdivision (c) was applied appropriately by the trial court.

C. Finding of a Valid Arbitration Agreement

Pagonis argues that the trial court erred when it applied the third-party exception pursuant to section 1281.2, subdivision (c), because it did not determine as a threshold matter that there was a valid arbitration agreement between Pagonis and Tatro. Section 1281.2 requires that “[o]n a petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy *if it determines that an agreement to arbitrate the controversy exists*” unless it determines that one of the three exceptions outlined in 1281.2, subdivision (c) is applicable. (§ 1281.2, emphasis added.)

Pagonis correctly asserts that the trial court did not expressly find that Pagonis and Tatro had entered into a valid arbitration agreement. Pagonis cites *Valsan Partners Limited Partnership v. Calcor Space Facility, Inc.* (1994) 25 Cal.App.4th 809, 816 (*Valsan*), and *Freeman v. State Farm Mutual Auto Insurance Company* (1975) 14 Cal.3d 473, 480, for the general proposition that when the trial court considers whether to compel arbitration, it must “examine and, to a limited extent construe the underlying agreement.” (*Valsan*, at p. 816, citations omitted.). Pagonis appears to argue that this requires the trial court to determine the validity of the arbitration contract.

However, the court's omission of an express finding that there was an arbitration agreement in existence does not require reversal. By determining that it should apply section 1281.2, subdivision (c), the trial court impliedly found that there was an arbitration agreement in existence. “[T]he appellate court applies the doctrine of implied

findings and presumes the trial court made all necessary findings supported by substantial evidence. [Citations.] This doctrine ‘is a natural and logical corollary to three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.’ [Citation].” (*Acquire II, supra*, 213 Cal.App.4th at p. 970.)

Additionally, when the trial court denied the motion to compel arbitration, Pagonis did not request a statement of decision from the trial court or any ruling regarding whether a valid arbitration agreement exists. If a party requests a statement of decision following the denial of a motion to compel arbitration, the court is required to provide one. (§ 1291 [“A statement of decision shall be made by the court, if requested pursuant to [Civil Code] section 632, whenever an order or judgment . . . is made that is appealable under this title”]; *Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 687 [“the Legislature intended to require the trial court to issue a statement of decision, upon proper request under [Civil Code] section 632, when denying a petition to compel arbitration”]; but see *Rebmann v. Rohde* (2011) 196 Cal.App.4th 1283, 1294.) However, if the parties fail to request a statement of decision, the court is not required to provide one. (*Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 Cal.App.4th 1128, 1134.) Failure to request a statement of decision when one is available results in waiver of any objection to the trial court’s failure to make findings to support its decision. (*Acquire II, supra*, 213 Cal.App.4th at p. 972.) Pagonis had the option pursuant to section 1291 to request a statement of decision following the court’s denial of her motion and she failed to do so. As a result, she has waived her challenge to the court’s failure to make any express finding. We conclude that the finding of the existence of an arbitration agreement, insofar as it may be necessary before finding an exception to enforcing the arbitration agreement, is implied by the trial court’s application of section 1281.2, subdivision (c). (*Id.* at p. 970.)

D. The DFEH Action Does Not Obstruct Enforcement of a Valid Arbitration Agreement

Pagonis argues that, in effect, the DFEH action is serving to obstruct an otherwise valid arbitration agreement between herself and Tatro, and that there is no California law addressing whether this is proper. She asserts that in the absence of California law, we should be persuaded by federal authority addressing actions by the EEOC to enforce Title VII of the Civil Rights Act of 1964 (42 U.S.C.S. § 2000e-5(f).) protections for employees. We do not agree, finding that her argument is simply an effort to apply the FAA to this case where she has waived the application of those procedures.

Pagonis cites the federal case of *EEOC v. Woodmen of the World Life Ins. Soc.* (8th Cir. 2007) 479 F.3d 561 (*Woodmen*), wherein the federal circuit court held that the FAA required an employee to arbitrate her dispute with her employer. In *Woodmen*, the EEOC brought a Title VII action against the employer in federal district court, and the employee intervened, filing a claim that was nearly identical to that brought by the EEOC. (*Id.* at p. 564.) The employer brought a motion to compel arbitration, which was denied by the district court. The 8th Circuit Court of Appeal reversed the trial court, finding that the employee's right to intervene in an EEOC enforcement action did not abrogate her "right to contract for an arbitral forum within which to litigate her claim." (*Id.* at p. 570.) The court held that the EEOC had the authority to pursue an enforcement action " 'regardless of the forum that the employer and employee have chosen to resolve their disputes.' " (*Id.* at p. 569.) Finally, the court held that the FAA, which provides that "suits pending in federal court on issues referable to arbitration 'shall [be] . . . stay[ed] . . . until such arbitration has been had.' (9 U.S.C. § 3)," compelled arbitration of the dispute. (*Woodmen*, at p. 570.)

Pagonis contends that this court should apply the rationale from *Woodmen* to find that a DFEH action should not be used to preclude the enforcement of a valid arbitration agreement between an employer and an employee who intervenes in the litigation. But

Woodmen's application of the FAA to an EEOC action to enforce Title VII is inapposite to the case before us because it interprets and applies the FAA and its procedures under 9 U.S.C. sections 3 and 4 in the context of a federal lawsuit. As we discussed previously, the FAA contains no exception comparable to section 1281.2, subdivision (c), which grants the trial court discretion to decline to compel arbitration or in the alternative, to stay arbitration when a third party is engaged in litigation that may produce inconsistent findings or rulings regarding the same transaction. To the contrary, under the FAA, arbitration must proceed first, and the litigation pending in the trial court must be stayed, regardless of the similarity between the litigation filed by the third party and the subject matter of the arbitration. However, based on the concessions of the parties in this case, we have concluded that the procedures outlined in the CAA govern the arbitration agreement before us, and those procedures contemplate the application of the exceptions outlined in section 1281.2, subdivision (c) as part of the legislature's arbitration enforcement scheme. Pagonis's argument that the DFEH action is being improperly used to prevent the execution of a valid arbitration agreement is thus without merit.

E. Application of Third-Party Litigation Exception Does Not Thwart Public Policy

Pagonis also asserts that the trial court's denial of the motion to compel arbitration under section 1281.2, subdivision (c) violated public policy. Specifically, she argues that denial of the motion "creates a dangerous precedent that would allow employees an end-run around arbitration agreements . . . they wish to avoid." Further, she contends that the court's ruling allows employees "the simple option of waiting until [the] DFEH files an enforcement action and then intervening to avoid being compelled to arbitrate claims that they had agreed to." This contention fails first because Pagonis does not demonstrate that the DFEH files employment discrimination complaints in great numbers such that its actions would jeopardize the public policy supporting contractual arbitration of such disputes.

However, Pagonis’s assertion that the court’s denial of her motion to compel arbitration under section 1281.2, subdivision (c) subverts the substantive public policy under the FAA and CAA favoring contractual arbitration agreements also fails because it was rejected by the United States Supreme Court in *Volt Info. Scis. v. Bd. of Trs.* (1989) 489 U.S. 468 (*Volt*), and our Supreme Court in *Cronus*. In *Volt*, the United States Supreme Court determined that the application of section 1281.2, subdivision (c) would not undermine the goals and policies of the FAA where parties have agreed that California law will govern their arbitration agreement. (*Volt*, at pp. 474-476.) “Interpreting a choice-of-law clause to make applicable state rules governing the conduct of arbitration—rules which are manifestly designed to encourage resort to the arbitral process—simply does not offend the rule of liberal construction set forth in *Moses H. Cone*, nor does it offend any other policy embodied in the FAA.” (*Volt*, at p. 476.) Similarly in *Cronus*, our high court rejected the assertion that application of section 1281.2, subdivision (c) contravenes the policy of enforceability of arbitration agreements established in the FAA. (*Cronus*, *supra*, 35 Cal.4th at pp. 391-393.) The CAA, including the exception under 1281.2, subdivision (c), is part of a statutory scheme “designed to enforce parties’ arbitration agreements” and “*not* a special rule limiting the authority of arbitrators.” (*Id.* at p. 393.) Under the CAA’s clear policy requiring that arbitration agreements must be enforced except in the exceptional circumstances outlined in section 1281.2, subdivision (c), the trial court’s application of the third-party litigation exception under the CAA is a method to encourage consistent rulings and orders. Rather than thwarting the public policy favoring enforcement of arbitration, the statute is an integral part of the scheme designed by the legislature to enforce arbitration in California. (*Ibid.*) As a statute enacted by the legislature, it reflects the public policy of the state. (*Moorefield Construction, Inc. v. Intervest-Mortgage Investment Company* (2014) 230 Cal.App.4th 146, 161.) As the parties here have agreed that the CAA is the operative procedural scheme to be applied to the arbitration agreement before us, we conclude that

the trial court's application of section 1281.2, subdivision (c) did not subvert public policy.

F. No Abuse of Discretion in Denying Motion to Compel Arbitration

Pagonis argues that even if the third-party litigation exception applies here, the trial court abused its discretion by declining to enforce the arbitration agreement rather than staying the litigation pending arbitration. We are not persuaded.

On a finding that the third-party litigation exception under section 1281.2, subdivision (c) applies, “the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.” (§ 1281.2, subd. (d).)

Here, having found that the third-party litigation exception applied, the trial court denied enforcement of the arbitration agreement. We review the trial court's decision to stay the arbitration or refuse to compel arbitration based on the possibility of conflicting rulings on common questions of law or fact for an abuse of discretion. (*Los Angeles Unified School District v. Safety National Casualty Corp.* (2017) 13 Cal.App.5th 471, 478; *Acquire II*, *supra*, 213 Cal.App.4th at pp. 971-972.) Pagonis has the burden of establishing that the trial court abused its discretion when it denied her motion to compel arbitration. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) She must demonstrate that the trial court's decision was so erroneous that it “falls outside the bounds of reason.” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479 (*Shamblin*).) We “view the entire record in the light most favorable to the court's ruling, and draw all reasonable inferences in support of it. [Citation.]” (*Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 765.) “The trial court's decision will be reversed only ‘for manifest abuse exceeding

the bounds of reason.’ [Citation.]” (*Ibid.*) “[O]ur task is not to supplant our own judgment for that of the trial court” (*Electronic Funds Solutions, LLC v. Murphy* (2005) 134 Cal.App.4th 1161, 1183.)

Pagonis argues that the court’s action was an abuse of discretion, because the court should have stayed either the arbitration or the DFEH’s suit rather than refuse to enforce the arbitration agreement. However, other than to express dissatisfaction with the court’s decision to refuse to enforce the arbitration agreement, and to offer her preferred action of staying the proceedings, Pagonis does not demonstrate that the court’s decision was unreasonable. Abuse of discretion is not established by arguing “that a different ruling would have been better.” (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281.)

Here, the trial court’s action was authorized by statute. The court noted that Pagonis, Tatro and the DFEH were all proceeding in the same action after Tatro intervened in the case, and there were no other parties to the action. The dispute among the three parties arose out of a series of events relevant to the claims of all parties. In her complaint in intervention, Tatro asserted five of the same causes of action as those raised by DFEH in its complaint. The court concluded that there was “a possibility of conflicting rulings on a common issue of law or fact,” and properly exercised its discretion to refuse to enforce the arbitration agreement as is permitted under section 1281.2, subdivision (c) to achieve an outcome characterized by consistent rulings of fact and law.

Pagonis also argues that the application of the third-party litigation exception has and will result in the burden of obligatory pleadings and litigation in excess of what would have been required if her arbitration with Tatro had gone forward while the action filed by DFEH was stayed. We do not understand the logic of this assertion. Judicial economy is not part of the analysis the trial court can apply when deciding whether

section 1281.2, subdivision (c) should be applied, but it is clear that there should be equal or less burden on the parties by litigating one action rather than two separate proceedings.

In short, Pagonis has not established that the trial court's denial of the motion to compel arbitration was outside "the bounds of reason." (*Shamblin, supra*, 44 Cal.3d at pp. 478-479.) We find that the trial court did not abuse its discretion in denying the motion to compel arbitration in this case.³

III. DISPOSITION

The order on appeal is affirmed.

³ Because we find that the trial court's denial of the motion was proper, we do not consider Tatro's alternative argument that the arbitration agreement is unenforceable because it contains unconscionable terms.

Greenwood, P.J.

WE CONCUR:

Grover, J.

Danner, J.